

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LEON BROWN,

Plaintiff,

v.

R. ESMOND, et al.,

Defendants.

Case No. 1:21-cv-00808-CDB (PC)

**ORDER STRIKING PLAINTIFF'S  
MOTION TO STRIKE DEFENDANTS'  
AFFIRMATIVE DEFENSES**

(Doc. 32)

This action proceeds on Plaintiff Leon Brown's Eighth Amendment deliberate indifference to health and safety claims against Defendants Esmond, Gutierrez, Cates, Holland, Vasquez and Sullivan.

**I. INTRODUCTION**

On July 21, 2023, this Court issued its Order Referring Case to Post-Screening ADR and Staying Case for 90 Days. (Doc. 31.) More specifically, and relevant here, the Order stayed this action for ninety days "to allow the parties an opportunity to settle their dispute before the discovery process begins. *No pleadings or motion may be filed in this case during the stay.*" (*Id.* at 2, ¶ 1, emphasis added.) The Order separately directed each party to complete and return an attached form in which the party indicated its interest in convening for a settlement conference.

On August 18, 2023, Plaintiff filed a "Notice of Motion and Motion to Strike Defendants Affirmative Defenses to Complaint." (Doc. 32.) The motion is signed and dated August 9, 2023.

(*Id.*) The same day, Plaintiff separately filed the completed notice described above pertaining to settlement conference that was attached to the Order staying the case.

## II. DISCUSSION

As noted above, this action is presently stayed for a period of 90 days to allow the parties an opportunity to resolve their dispute prior to discovery commencing. The stay began July 21, 2023. After the stay was imposed, Plaintiff filed a motion seeking to strike Defendants' affirmative defenses (Doc. 32), as asserted in their answer to Plaintiff's complaint. However, as indicated in the Court's July 21, 2023 order, "[n]o pleadings or motions may be filed ... during the stay." (*See* Doc. 31 at 2, ¶ 1.) Because Plaintiff separately returned the notice form indicating interest in a settlement conference, it is clear Plaintiff had received and was aware of the stay entered in this case.

Additionally, because the parties have indicated a willingness to participate in early settlement proceedings (*see* Docs. 33 & 35), a settlement conference will be scheduled in the near future. The best use of this Court's judicial resources—including the consideration of and decision regarding Plaintiff's motion—is to delay consideration of Plaintiff's motion unless it becomes necessary to do so. In the event early settlement conference efforts are not successful and the stay is ultimately lifted, Plaintiff may re-file his motion. Accordingly, Plaintiff's August 18, 2023 motion will be stricken.

## III. CONCLUSION AND ORDER

For the reasons given, **IT IS HEREBY ORDERED** that Plaintiff's motion to strike affirmative defenses filed August 18, 2023 (Doc. 32) be **STRICKEN** from the docket of this action.

IT IS SO ORDERED.

Dated: September 13, 2023

  
UNITED STATES MAGISTRATE JUDGE